

106TH CONGRESS  
1ST SESSION

# S. 1528

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions.

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## IN THE SENATE OF THE UNITED STATES

AUGUST 5, 1999

Mr. LOTT (for himself, Mr. DASCHLE, Mr. CHAFEE, Mrs. LINCOLN, Mr. WARNER, and Mr. BAUCUS) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify liability under that Act for certain recycling transactions.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Superfund Recycling  
5       Equity Act of 1999”.

6       **SEC. 2. PURPOSES.**

7       The purposes of this Act are—

8               (1) to promote the reuse and recycling of scrap  
9       material in furtherance of the goals of waste mini-

1 mization and natural resource conservation while  
 2 protecting human health and the environment;

3 (2) to create greater equity in the statutory  
 4 treatment of recycled versus virgin materials; and

5 (3) to remove the disincentives and impedi-  
 6 ments to recycling created as an unintended con-  
 7 sequence of the 1980 Superfund liability provisions.

8 **SEC. 3. CLARIFICATION OF LIABILITY UNDER CERCLA FOR**  
 9 **RECYCLING TRANSACTIONS.**

10 (a) CLARIFICATION.—Title I of the Comprehensive  
 11 Environmental Response, Compensation, and Liability Act  
 12 of 1980 (42 U.S.C. 9601 et seq.) is amended by adding  
 13 at the end the following new section:

14 **“SEC. 127. RECYCLING TRANSACTIONS.**

15 “(a) LIABILITY CLARIFICATION.—As provided in  
 16 subsections (b), (c), (d), and (e), a person who arranged  
 17 for recycling of recyclable material shall not be liable  
 18 under section 107(a)(3) or 107(a)(4) with respect to the  
 19 material.

20 “(b) RECYCLABLE MATERIAL DEFINED.—For pur-  
 21 poses of this section, the term ‘recyclable material’ means  
 22 scrap paper, scrap plastic, scrap glass, scrap textiles,  
 23 scrap rubber (other than whole tires), scrap metal, or  
 24 spent lead-acid, spent nickel-cadmium, and other spent  
 25 batteries, as well as minor amounts of material incident

1 to or adhering to the scrap material as a result of its nor-  
 2 mal and customary use prior to becoming scrap; except  
 3 that such term shall not include shipping containers of a  
 4 capacity from 30 liters to 3,000 liters, whether intact or  
 5 not, having any hazardous substance (but not metal bits  
 6 and pieces or hazardous substance that form an integral  
 7 part of the container) contained in or adhering thereto.

8 “(c) TRANSACTIONS INVOLVING SCRAP PAPER,  
 9 PLASTIC, GLASS, TEXTILES, OR RUBBER.—Transactions  
 10 involving scrap paper, scrap plastic, scrap glass, scrap tex-  
 11 tiles, or scrap rubber (other than whole tires) shall be  
 12 deemed to be arranging for recycling if the person who  
 13 arranged for the transaction (by selling recyclable material  
 14 or otherwise arranging for the recycling of recyclable ma-  
 15 terial) can demonstrate by a preponderance of the evi-  
 16 dence that all of the following criteria were met at the  
 17 time of the transaction:

18 “(1) The recyclable material met a commercial  
 19 specification grade.

20 “(2) A market existed for the recyclable mate-  
 21 rial.

22 “(3) A substantial portion of the recyclable ma-  
 23 terial was made available for use as feedstock for the  
 24 manufacture of a new saleable product.

1           “(4) The recyclable material could have been a  
2 replacement or substitute for a virgin raw material,  
3 or the product to be made from the recyclable mate-  
4 rial could have been a replacement or substitute for  
5 a product made, in whole or in part, from a virgin  
6 raw material.

7           “(5) For transactions occurring 90 days or  
8 more after the date of enactment of this section, the  
9 person exercised reasonable care to determine that  
10 the facility where the recyclable material was han-  
11 dled, processed, reclaimed, or otherwise managed by  
12 another person (hereinafter in this section referred  
13 to as a ‘consuming facility’) was in compliance with  
14 substantive (not procedural or administrative) provi-  
15 sions of any Federal, State, or local environmental  
16 law or regulation, or compliance order or decree  
17 issued pursuant thereto, applicable to the handling,  
18 processing, reclamation, storage, or other manage-  
19 ment activities associated with recyclable material.

20           “(6) For purposes of this subsection, ‘reason-  
21 able care’ shall be determined using criteria that in-  
22 clude (but are not limited to)—

23                   “(A) the price paid in the recycling trans-  
24 action;

1 “(B) the ability of the person to detect the  
2 nature of the consuming facility’s operations  
3 concerning its handling, processing, reclama-  
4 tion, or other management activities associated  
5 with recyclable material; and

6 “(C) the result of inquiries made to the ap-  
7 propriate Federal, State, or local environmental  
8 agency (or agencies) regarding the consuming  
9 facility’s past and current compliance with sub-  
10 stantive (not procedural or administrative) pro-  
11 visions of any Federal, State, or local environ-  
12 mental law or regulation, or compliance order  
13 or decree issued pursuant thereto, applicable to  
14 the handling, processing, reclamation, storage,  
15 or other management activities associated with  
16 the recyclable material. For the purposes of this  
17 paragraph, a requirement to obtain a permit  
18 applicable to the handling, processing, reclama-  
19 tion, or other management activity associated  
20 with the recyclable materials shall be deemed to  
21 be a substantive provision.

22 “(d) TRANSACTIONS INVOLVING SCRAP METAL.—

23 “(1) Transactions involving scrap metal shall be  
24 deemed to be arranging for recycling if the person  
25 who arranged for the transaction (by selling recycla-

1       ble material or otherwise arranging for the recycling  
2       of recyclable material) can demonstrate by a prepon-  
3       derance of the evidence that at the time of the  
4       transaction—

5               “(A) the person met the criteria set forth  
6               in subsection (c) with respect to the scrap  
7               metal;

8               “(B) the person was in compliance with  
9               any applicable regulations or standards regard-  
10              ing the storage, transport, management, or  
11              other activities associated with the recycling of  
12              scrap metal that the Administrator promulgates  
13              under the Solid Waste Disposal Act subsequent  
14              to the enactment of this section and with re-  
15              gard to transactions occurring after the effec-  
16              tive date of such regulations or standards; and

17              “(C) the person did not melt the scrap  
18              metal prior to the transaction.

19              “(2) For purposes of paragraph (1)(C), melting  
20              of scrap metal does not include the thermal separa-  
21              tion of 2 or more materials due to differences in  
22              their melting points (referred to as ‘sweating’).

23              “(3) For purposes of this subsection, the term  
24              ‘scrap metal’ means bits and pieces of metal parts  
25              (e.g., bars, turnings, rods, sheets, wire) or metal

1 pieces that may be combined together with bolts or  
 2 soldering (e.g., radiators, scrap automobiles, railroad  
 3 box cars), which when worn or superfluous can be  
 4 recycled, except for scrap metals that the Adminis-  
 5 trator excludes from this definition by regulation.

6 “(e) TRANSACTIONS INVOLVING BATTERIES.—  
 7 Transactions involving spent lead-acid batteries, spent  
 8 nickel-cadmium batteries, or other spent batteries shall be  
 9 deemed to be arranging for recycling if the person who  
 10 arranged for the transaction (by selling recyclable material  
 11 or otherwise arranging for the recycling of recyclable ma-  
 12 terial) can demonstrate by a preponderance of the evi-  
 13 dence that at the time of the transaction—

14 “(1) the person met the criteria set forth in  
 15 subsection (c) with respect to the spent lead-acid  
 16 batteries, spent nickel-cadmium batteries, or other  
 17 spent batteries, but the person did not recover the  
 18 valuable components of such batteries; and

19 “(2)(A) with respect to transactions involving  
 20 lead-acid batteries, the person was in compliance  
 21 with applicable Federal environmental regulations or  
 22 standards, and any amendments thereto, regarding  
 23 the storage, transport, management, or other activi-  
 24 ties associated with the recycling of spent lead-acid  
 25 batteries;

1           “(B) with respect to transactions involving  
2       nickel-cadmium batteries, Federal environmental  
3       regulations or standards are in effect regarding the  
4       storage, transport, management, or other activities  
5       associated with the recycling of spent nickel-cad-  
6       mium batteries, and the person was in compliance  
7       with applicable regulations or standards or any  
8       amendments thereto; or

9           “(C) with respect to transactions involving  
10      other spent batteries, Federal environmental regula-  
11      tions or standards are in effect regarding the stor-  
12      age, transport, management, or other activities asso-  
13      ciated with the recycling of such batteries, and the  
14      person was in compliance with applicable regulations  
15      or standards or any amendments thereto.

16      “(f) EXCLUSIONS.—

17           “(1) The exemptions set forth in subsections  
18      (c), (d), and (e) shall not apply if—

19           “(A) the person had an objectively reason-  
20      able basis to believe at the time of the recycling  
21      transaction—

22           “(i) that the recyclable material would  
23      not be recycled;



1           “(ii) that the recyclable material  
2           would be burned as fuel, or for energy re-  
3           covery or incineration; or

4           “(iii) for transactions occurring before  
5           90 days after the date of the enactment of  
6           this section, that the consuming facility  
7           was not in compliance with a substantive  
8           (not procedural or administrative) provi-  
9           sion of any Federal, State, or local envi-  
10          ronmental law or regulation, or compliance  
11          order or decree issued pursuant thereto,  
12          applicable to the handling, processing, rec-  
13          lamation, or other management activities  
14          associated with the recyclable material;

15          “(B) the person had reason to believe that  
16          hazardous substances had been added to the re-  
17          cyclable material for purposes other than proc-  
18          essing for recycling;

19          “(C) the person failed to exercise reason-  
20          able care with respect to the management and  
21          handling of the recyclable material (including  
22          adhering to customary industry practices cur-  
23          rent at the time of the recycling transaction de-  
24          signed to minimize, through source control, con-

1           tamination of the recyclable material by haz-  
2           ardous substances); or

3           “(D) with respect to any item of a recycla-  
4           ble material, the item contained polychlorinated  
5           biphenyls at a concentration in excess of 50  
6           parts per million or any new standard promul-  
7           gated pursuant to applicable Federal laws.

8           “(2) For purposes of this subsection, an objec-  
9           tively reasonable basis for belief shall be determined  
10          using criteria that include (but are not limited to)  
11          the size of the person’s business, customary industry  
12          practices (including customary industry practices  
13          current at the time of the recycling transaction de-  
14          signed to minimize, through source control, contami-  
15          nation of the recyclable material by hazardous sub-  
16          stances), the price paid in the recycling transaction,  
17          and the ability of the person to detect the nature of  
18          the consuming facility’s operations concerning its  
19          handling, processing, reclamation, or other manage-  
20          ment activities associated with the recyclable mate-  
21          rial.

22          “(3) For purposes of this subsection, a require-  
23          ment to obtain a permit applicable to the handling,  
24          processing, reclamation, or other management activi-

1       ties associated with recyclable material shall be  
2       deemed to be a substantive provision.

3       “(g) EFFECT ON OTHER LIABILITY.—Nothing in  
4 this section shall be deemed to affect the liability of a per-  
5 son under paragraph (1) or (2) of section 107(a). Nothing  
6 in this section shall be deemed to affect the liability of  
7 a person under paragraph (3) or (4) of section 107(a) with  
8 respect to materials that are not recyclable materials as  
9 defined in subsection (b) of this section.

10       “(h) REGULATIONS.—The Administrator has the au-  
11 thority, under section 115, to promulgate additional regu-  
12 lations concerning this section.

13       “(i) EFFECT ON PENDING OR CONCLUDED AC-  
14 TIONS.—The exemptions provided in this section shall not  
15 affect any concluded judicial or administrative action or  
16 any pending judicial action initiated by the United States  
17 prior to enactment of this section.

18       “(j) LIABILITY FOR ATTORNEY’S FEES FOR CERTAIN  
19 ACTIONS.—Any person who commences an action in con-  
20 tribution against a person who is not liable by operation  
21 of this section shall be liable to that person for all reason-  
22 able costs of defending that action, including all reason-  
23 able attorney’s and expert witness fees.

24       “(k) RELATIONSHIP TO LIABILITY UNDER OTHER  
25 LAWS.—Nothing in this section shall affect—

1           “(1) liability under any other Federal, State, or  
2           local statute or regulation promulgated pursuant to  
3           any such statute, including any requirements pro-  
4           mulgated by the Administrator under the Solid  
5           Waste Disposal Act; or

6           “(2) the ability of the Administrator to promul-  
7           gate regulations under any other statute, including  
8           the Solid Waste Disposal Act.”.

9           (b) TECHNICAL AMENDMENT.—The table of contents  
10          for title I of such Act is amended by adding at the end  
11          the following item:

          “SEC. 127. Recycling transactions.”.

